IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9029 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HINDUSTAN LEVER LTD

Versus

SALES TAX OFFICER

Appearance:

MR KH KAJI for Petitioners

M/S MG DOSHIT & CO for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 30/08/2000

ORAL JUDGEMENT

Rule. Service of rule waived by Shri M.G.Doshit

appearing for the respondent Sales Tax department. Ld. Counsel Shri K.H.Kazi appears for the petitioner. Both are heard finally on this petition.

2. The petitioner no.1 is a multinational company and is categorised as a Superstar Trading House. The authorities of the Sales Tax Department respondents herein have issued a restraint order dated 14.8.2000 whereby the petitioner no.1 company has been restrained from exporting the stock of castor oil described in the order and which is stored at Kandla Port.

3. The case of the petitioner no.1 company is that it has purchased the castor oil from different suppliers under H Form for export and it is not leviable to sales tax in the hands of the petitioner no.1 company. It is also submitted that earlier on such a restraint order being issued, the petitioner was forced to make an adhoc payment of a sum of Rs.75 lacs as a pre-condition for permitting it to export the quantity of oil.

4. On the notice being issued on this petition, an affidavit in reply has been filed on behalf of the Department stating that according to its information certain purchases were made from dealers without H Form. Ld. Counsel appearing for the Department at the time of hearing also submitted that it was necessary to examine the quantity of castor oil and the connecting documents of purchase because raw oil was purchased by the petitioner no.1 company and it is being exported after processing it into refined oil. It is submitted that if the raw oil has been processed before export, there may be a liability towards sales tax on the selling dealer.

5. The above stand taken by the Sales Tax Department has been specifically denied on behalf of the Counsel for the petitioner stating that it has purchased oil from different suppliers and the stock of quantity proposed to be exported is in the same condition in which it was purchased. Ld. Counsel for the petitioner however submits that in any case when the petitioner no.1 company is prepared to cooperate with the Department in supplying all relevant information there is no justification to put a restraint on export. The goods are stocked at the Port and once the ship arrives the petitioner would be subject to heavy demurrage charges.

6. At this stage, it is not necessary for us to go into the merits of the contentions advanced by the parties on the tax liability of the petitioner no.1 company company. We however find no justification on the

part of the Sales Tax Department to put an absolute restraint on exporting the goods of the petitioner no.1 company presently stored in the ware-house of the petitioner no.2. It is open to the authorities of the Sales Tax Department to inspect the goods before they are loaded for export and to collect all the documents and information regarding the supplies and suppliers of the quantity of oil which is to be exported from Kandla Port by the petitioner no.1 company.

7. We therefore partly allow this petition by directing the respondents to make an inspection of the goods, if necessary, and collect all necessary information regarding the supplies and suppliers of the quantity of oil mentioned in the impugned order dated 14.8.2000. Let the necessary inspection and collection of information be completed within 2 days and the petitioner no.1 company shall then be allowed to export the goods. On behalf of the petitioner, Ld. Counsel undertakes to extend all cooperation in supplying necessary information with regard to the supply and for identification of the suppliers for the purpose of deciding the question of taxability. With these directions, the petition stands partly allowed. Rule is made absolute with no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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